
UNITED STATES OF AMERICA	)	IN THE COURT OF MILITARY
	)	COMMISSION REVIEW
)	
	)	MOTION TO ATTACH
)	
	)	CASE No. 07-001
)	
)	
v.)	
)	
	)	Hearing Held ¹ at Guantanamo Bay, Cuba on 4
	)	June 2007
	)	Before a Military Commission
OMAR AHMED KHADR	)	Convened by MCCO # 07-02
	)	Presiding Military Judge
	)	Colonel Peter E. Brownback III
)	

**TO THE HONORABLE, THE JUDGES OF THE COURT OF MILITARY
COMMISSION REVIEW**

Relief Sought

COMES NOW Mr. Omar Khadr and respectfully requests that this Court attach the following document to Mr. Khadr's Motion for Expedited Oral Argument filed concurrently herewith:

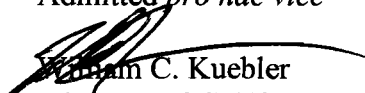
A) Mark Harvey e-mail of 30 July 2007

This document is necessary to support the factual basis for Mr. Khadr's Motion for Expedited Oral Argument. Therefore, this Court should grant Mr. Khadr's motion.

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¹ Mr. Khadr has yet to be arraigned.


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DENIED (signature) _____
DATE _____

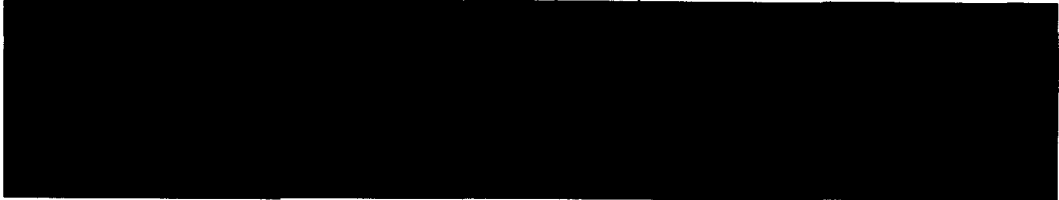
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was emailed to this Court; Major Jeffrey D. Groharing, USMC; Captain Keith A. Petty, JA, USA; and Lieutenant Clayton Trivett, Jr., JAGC, USN on 31 July 2007.



William Kuebler
LCDR, JAGC, USN
Detailed Appellate Defense Counsel

Kuebler, William, LCDR, DoD OGC

From: Harvey, Mark Mr DoD OGC
Sent: Monday, July 30, 2007 6:47 PM
To: Groharing, Jeff, Maj, DoD OGC; Kuebler, William, LCDR, DoD OGC
Cc: 

Subject: Scheduling Oral Argument

All the panel members are available for oral argument the week of 20-24 August. Please plan on the oral argument being at the United States Court of Appeals for the Federal Circuit, 717 Madison Place, N.W., Washington D.C. 20439. The USCMCR wishes counsel to address the Motion to Abate and the Government's Appeal.

Please provide the names of counsel who will be seated at the counsel table, and the availability for the week of 20-24 August as soon as possible.

Information from the Federal Circuit website is below.

Regards,

Mark Harvey
Deputy Clerk, USCMCR

By Foot:

The National Courts Building is located on Madison Place between Pennsylvania Avenue and H Street, Northwest, on the east side of Lafayette Square (the President's Park), across from the White House, in downtown Washington, D.C. The Treasury Department, the Department of Veterans Affairs, and St. John's Church and Parish House are nearby. The Dolley Madison House, the former Cosmos Club, and the Tayloe House, famous landmarks fronting on the square adjacent to the National Courts Building, are actually part of the courthouse complex.

By Subway:

Take Metro's Blue or Orange Line to the McPherson Square Station. Exit following signs toward the White House. At street level take Vermont Avenue (bear left at the top of the escalator) in the direction of H Street. Crossing H Street, Vermont Avenue becomes Madison Place. The National Courts Building's main entrance is midblock on the east side of the street.

By Taxi:

Madison Place is closed to vehicular traffic. State your destination as "H and Vermont" or "H and Madison Place". An entryway to the courtyard of the National Courts Building is located on the south side of H Street, adjacent to the Dolley Madison House, 1520 H Street, NW., and it provides access to the main entrance to the courthouse.

By Car:

From the North: I-95 and the Baltimore-Washington Parkway connect with I-495/95 (Capital Beltway). Follow Baltimore-Washington Parkway, which becomes New York Avenue, into the downtown area. MD

97 (Georgia Avenue) to 16th Street also provides a direct connection to the downtown area.

From the South: I-95 connects directly with I-395 (Shirley Highway) for easy access to the 14th Street corridor downtown.

From the West: I-270 connects directly with I-495 and in conjunction with MD 355 (Wisconsin Avenue), or Connecticut Avenue, provides access to the downtown area. I-66 also provides a direct connection to the downtown area, but it is HOV-2 (carpools and buses only) during rush hours.

From the East: Direct access to the downtown area is provided by US 50 and New York Avenue.

Automobile access to the courthouse is limited to H Street, which is one-way, eastbound.

Parking:

The National Courts Building does not have public parking. Some meter parking is available on H, I (Eye), 14th and 15th Streets, and New York Avenue. Public garages or parking lots are located at: 1420 and 1425 New York Avenue; 1401 New York Avenue (enter on H Street near 14th Street); and 815 14th Street.

Accessibility to the disabled:

A flight of steps leads to the courtyard level and main entrance of the courthouse. However, the courtyard entryway on H Street providing alternative access to the main entrance is at sidewalk level without barriers. The Clerk's Office, Library, and one of the courtrooms are also barrier-free.

Deliveries:

Couriers must use the main entrance for delivery of briefs and other papers and follow instructions from the court security officers. Delivery of bulky items may be made at the loading dock if arrangements have been made beforehand.

Security:

The United States Marshals Service provides security for the National Courts Building. Armed court security officers guard all entrances. Visitors must pass through metal detectors, and packages are x-rayed. Visitors also must sign in and out, and wear badges authorizing access to the floors to be visited.

By WWW:

www.fedcir.gov

UNITED STATES OF AMERICA	)	IN THE COURT OF MILITARY
	)	COMMISSION REVIEW
)	
)	MOTION FOR EXPEDITED ORAL
)	ARGUMENT ON APPELLEE'S MOTION TO
)	ABATE PROCEEDINGS
)	
)	CASE No. 07-001
v.)	
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)	Hearing Held ¹ at Guantanamo Bay, Cuba on 4
)	June 2007
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OMAR AHMED KHADR)	Before a Military Commission
)	Convened by MCCO # 07-02
)	Presiding Military Judge
)	Colonel Peter E. Brownback III
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**TO THE HONORABLE, THE JUDGES OF THE COURT OF MILITARY
COMMISSION REVIEW**

Relief Sought

COMES NOW Mr. Omar Khadr ("Appellee") and respectfully requests that this Court schedule oral argument on the Appellee's Motion to Abate Proceedings (filed with the Court on 20 July 2007), and issue a ruling thereon, at the earliest possible date. For the reasons discussed in the Motion to Abate, this Court is without jurisdiction to proceed. That the Appellee's Motion, at the very least, raises a substantial doubt as to the Court's jurisdiction is confirmed by Captain John Rolph's own actions in seeking evidence of the Secretary of Defense's ratification of his appointment from the Department of Defense General Counsel's Office. (*See* Disclosure Concerning Motion to Abate and Motion to Attach documents, dated 23 July 2007.) This is a threshold jurisdictional matter that must be resolved before the Court takes further filings from the parties or schedules further proceedings in this case. *See Vt. Agency of Natural Res. v.*

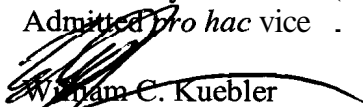
¹ Mr. Khadr has yet to be arraigned.

United States ex *rel.* Stevens, 529 U.S. 765, 778-79 (2000) ("Questions of jurisdiction, of course, should be given priority -- since if there is no jurisdiction there is no authority to sit in judgment of anything else."). And, as acknowledged by the Court in the Assistant Clerk's electronic mail of 30 July 2007, oral argument in connection with the novel and complex issues raised by the Appellee's Motion to Abate is appropriate. (See Attachment A (stating that the "USCMCR wishes counsel to address the Motion to Abate" at oral argument")). Accordingly, the Appellee requests oral argument at the earliest opportunity, as well as a ruling on its Motion to Abate before the Court proceeds further with this matter.

Respectfully submitted,

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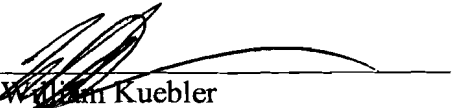
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GRANTED (signature) _____
DENIED (signature) _____
DATE _____

ATTACHMENT

- A. Mark Harvey e-mail of 30 July 2007

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was **emailed** to this Court; Major Jeffrey D. Groharing, USMC; Captain Keith A. Petty, JA, USA; and Lieutenant Clayton Trivett, Jr., JAGC, USN on 31 July 2007.



William Kuebler
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Detailed Appellate Defense Counsel

UNITED STATES OF AMERICA,)	IN THE COURT OF MILITARY
Appellant	)	COMMISSION REVIEW
	)	APPELLEE'S MOTION FOR ADDITIONAL
	)	JUDICIAL DISCLOSURE OR, IN THE
	)	ALTERNATIVE, TO COMPEL
	)	PRODUCTION OF DOCUMENTS
)	
	)	CASE No. 00000001
v.)	
)	
	)	Hearing Held ¹ at Guantanamo Bay, Cuba on 4
	)	June 2007
	)	Before a Military Commission
OMAR AHMED KHADR,	)	Convened by MCCO # 07-02
Appellee	)	Presiding Military Judge
	)	Colonel Peter E. Brownback III
)	

**TO THE HONORABLE, THE JUDGES OF THE COURT OF MILITARY
COMMISSION REVIEW**

Relief Sought

Appellee Omar Khadr respectfully requests that this Court make additional judicial disclosures or, in the alternative, order the production of documents relating to the establishment of this Court's rules. Specifically, Appellee seeks documents establishing whether the Secretary of Defense reviewed and approved the Court of Military Commission Rules, as required by Rule for Military Commissions 1201(b)(4). In the event that this Court declines to make additional judicial disclosures, it should order Appellant to produce any documents indicating that the Secretary of Defense reviewed and approved this Court's Rules or, if applicable, indicate that no such documents exists.

¹ Mr. Khadr has yet to be arraigned.

Facts

On 28 June 2007, the Deputy Chief Judge promulgated the Court of Military Commission Review Rules of Practice dated 27 June 2007. Neither the promulgating letter, the e-mail forwarding the promulgating letter and the Rules, nor the Rules themselves indicate that the Secretary of Defense had reviewed and approved the Rules.

Argument

Appellee should receive access to information and documents necessary to establish whether this Court's Rules were properly promulgated, information that is within the exclusive possession of Appellant and this Court.

The Military Commissions Act gave the Secretary of Defense the authority to prescribe this Court's procedures. 10 U.S.C. § 950f(c). The Secretary exercised this authority in Rule for Military Commissions (R.M.C.) 1201(b)(4), which provides: "In consultation with the other appellate military judges of the Court of Military Commission Review, and subject to the review and approval of the Secretary, the Chief Judge shall prescribe procedures for appellate review by the Court of Military Commission Review."

Nothing in this Court's Rules or the documentation promulgating those Rules establishes that the Secretary of Defense reviewed and approved those Rules, as required by R.M.C. 1201(b)(4). That information is known by, and any documentation is possessed by, the adverse party (of which the Secretary of Defense is a principal officer) and this Court.

Appellee must be allowed to determine whether the regulatory prerequisite for the establishment of this Court's rules was satisfied – a matter known to both Appellant and this Court, but not to Appellee. Providing such documentation to Appellee, or, if applicable,

indicating that no such documentation exists, would hardly be burdensome. On the contrary, this information is within the personal knowledge of one of the Judges on this very panel.

In the event that this Court declines to make additional judicial disclosures, it should order Appellant to produce any documents indicating that the Secretary of Defense reviewed and approved this Court's Rules or, if applicable, indicate that no such documents exists. Any such documentation is in the possession of Appellant and is not available to Appellee. A motion to compel production of a document is a well-established procedure in military appellate practice. *See, e.g., United States v. Rodriguez-Rivera*, 61 M.J. 148 (C.A.A.F. 2005) (order); *United States v. Kensey*, 36 M.J. 73 (C.M.A. 1992); *United States v. Curtis*, 30 M.J. 22 (C.M.A. 1990); *United States v. Gatlin*, 60 M.J. 804, 806 (N-M. Ct. Crim. App. 2004).

Either additional judicial disclosures or an order compelling production is manifestly necessary. Without such an order, it would be impossible for Appellee to determine whether the regulatory requirements to promulgate this Court's rules have been satisfied. Determining whether this Court's rules were in place on 4 July 2007 is, in turn, necessary to determine whether Appellant properly complied with Rule for Military Commissions 908(c)(11), which provides, "If the United States elects to file an appeal, it shall be filed directly with the Court of Military Commission Review, in accordance with the rules of that court."

Conclusion

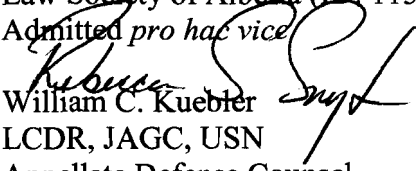
For the foregoing reasons, this Court should grant Appellee's Motion for Additional Judicial Disclosures or, in the Alternative, to Compel Production of Documents.

Respectfully submitted,

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